

REMARKS

Claims 47-56 are in the present application. Applicants have amended Claim 47 to further clarify the subject matter of the present application. Support for this amendment can be found at Page 6, Line 18 and Page 7, Line 10.

The Examiner has rejected Claim 49 under 35 USC §112, second paragraph, as allegedly failing to distinctly claim the subject matter of the present invention. Applicants have amended Claim 49 so that it now reads "antibody-enzyme conjugate". Withdrawal of the present rejection is respectfully requested.

Claims 47-51 and 54 have been rejected under 35 USC § 103(a) as allegedly rendered unpatentable by Hirschfeld in view of Ueda et al. Claims 52-53 have been rejected under 35 USC § 103(a) as allegedly rendered unpatentable by Hirschfeld in view of Ueda et al and Bogart et al. Claims 55 and 56 have been rejected under 35 USC § 103(a) as allegedly rendered unpatentable by Hirschfeld in view of Ueda et al and Nyez.

Main Claim 47 is directed to a kit for performing a flow-through analytical test for detecting the presence of and distinguishing between Influenza A viral antigens and Influenza B viral antigens in a biological sample suspected of containing one or both of Influenza A viral antigens and Influenza B viral antigens, the kit comprising: (a) an analytical test device having a plurality of wells, wherein the wells do not communicate with each other; (b) a first detection reagent capable of recognizing Influenza A viral antigens; (c) a second detection reagent capable of recognizing Influenza B viral antigens; and (d) a reagent capable of generating a signal upon detection of one or both of Influenza A viral antigens and Influenza B viral antigens.

None of the cited prior art references teach or suggest the subject matter of the claimed invention as amended.

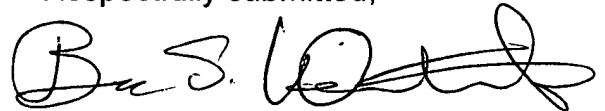
Specifically, the primary reference, Hirschfeld, discloses a microtiter plate method. However, the present invention discloses a distinctly different format, a flow-through immunoassay format. For Influenza A and B, the present invention does not use a capture antibody, as is taught in Hirschfeld. Therefore, Hirschfeld does not teach or suggest the present invention as claimed.

Ueda et al is cited as a secondary reference against the present invention when combined with Hirschfeld. As Hirschfeld is no longer a proper reference against this invention, Ueda et al cannot be used in the invention of Hirschfeld to render the claimed invention obvious. Furthermore, the secondary references Bogart et al and Nyez provide no additional teachings that would enable one of ordinary skill in the art to

achieve the claimed invention. Withdrawl of the present rejections under Section 103 is therefore respectfully requested.

Thus, in view of the present Amendement and Remarks, the claims of the present application are believed to be in condition for allowance. Early notice thereof is respectfully requested by Applicants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce S. Weintraub", with a stylized, flowing script.

Bruce S. Weintraub
Attorney for Applicants
Registration No. 34,277

BECTON DICKINSON AND COMPANY
1 Becton Drive
Franklin Lakes, NJ 07417-1880
(201) 847-7096

#78068